Supreme Court of the United States

October Term, 1945—No. 55.

UNITED STATES OF AMERICA and
FEDERAL COMMUNICATIONS COMMISSION,
Appellants,
v.

NEW YORK TELEPHONE COMPANY,
Appellee.

APPENDIX TO BRIEF FOR NEW YORK TELEPHONE COMPANY, APPELLEE.

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Appendix I.

Statutes and Administrative Regulations.

The pertinent provisions of the Interstate Commerce Act (24 Stat. 379, 386, as amended by the Acts of June 29, 1906, 34 Stat. 584, 593, 594, and of June 18, 1910, 36 Stat. 539, 555) are as follows:

> "SEC. 20. (5) The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the provisions of this Act, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys. * * * The Commission shall at all times have access to all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing, and kept or required to be kept by carriers subject to this Act, and the provisions of this section respecting the preservation and destruction of books, papers, and documents shall apply thereto, and it shall be unlawful for such carriers to keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, and it may employ special agents or examiners, who shall have authority under the order of the Commission to inspect and examine any and all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing, and kept or required to be kept by such carriers. * * *"

The pertinent provisions of the Communications Act of 1934 (48 Stat. 1064, Chapter 652, as amended, 50 Stat. 189, Chapter 229) are as follows:

> "SEC. 220 (a) The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to this Act, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys."

> "SEC. 220 (c) The Commission shall at all times have access to and the right of inspection and examination of all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing, and kept or required to be kept by such carriers, and the provisions of this section respecting the preservation and destruction of books, papers, and documents shall apply thereto. The burden of proof to justify every accounting entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry and the Commission may suspend a charge or credit pending submission of proof by such person. Any provision of law prohibiting the disclosure of the contents of messages or communications shall not be deemed to prohibit the disclosure of any matter in accordance with the provisions of this section."

> "SEC. 220 (g) After the Commission has prescribed the forms and manner of keeping of accounts, records, and memoranda to be kept by any person as herein provided, it shall be unlawful for such person to keep any other accounts, records, or memoranda than those so prescribed or such as may be approved by the Commission or to keep the accounts in any other manner than that prescribed or approved by the Commission. Notice of alterations by the Commission in the required manner or form of keeping accounts shall be given to

such persons by the Commission at least six months before the same are to take effect."

"Sec. 402 (a) The provisions of the Act of October 22, 1913 (38 Stat. 219), relating to the enforcing or setting aside of the orders of the Interstate Commerce Commission, are hereby made applicable to suits to enforce, enjoin, set aside, annul, or suspend any order of the Commission under this Act (except any order of the Commission granting or refusing an application for a construction permit for a radio station, or for a radio station license, or for renewal of an existing radio station license, or for modification of an existing radio station license, or suspending a radio operator's license), and such suits are hereby authorized to be brought as provided in that Act."

"Sec. 604 (a) All orders, determinations, rules, regulations, permits, contracts, licenses, and privileges which have been issued, made, or granted by the Interstate Commerce Commission, the Federal Radio Commission, or the Postmaster General, under any provision of law repealed or amended by this Act or in the exercise of duties, powers, or functions transferred to the Commission by this Act, and which are in effect at the time this section takes effect, shall continue in effect until modified, terminated, superseded, or repealed by the Commission or by operation of law."

The pertinent provisions of the Interstate Commerce Commission's Uniform System of Accounts for Telephone Companies, Class A and Class B, effective January 1, 1913, are as follows:

"10. Costs to be actual money costs.—All charges made to fixed capital or other property accounts with respect to any property acquired on or after January 1, 1913, should be the actual money costs of the property. When the consideration actually given for anything with respect to which a charge is made to any fixed capital or other property account is anything other than money, the actual consideration should be described in the entry with sufficient fullness and particularity to identify it, and the amount charged should be the actual money value of such consideration at the time of the transaction."

"13. Plant and equipment and other property purchased.—When any property in the form of a going or completed plant is purchased, an appraisal of the property so acquired should be made, and the different constituent elements of the plant (and equipment, if any) or other property acquired should be appraised at their structural value; that is to say, at the estimated cost of replacement or reproduction less deterioration to the then existing conditions through wear and tear, obsolescence, and inadequacy. If the actual money value of the consideration given for the plant or other property was at the time of the acquisition in excess of such appraised value, the excess should be charged to account No. 204, 'Other Intangible Capital,' and the appraised values of the constituent elements should be charged to the appropriate fixed capital accounts as hereinafter designated. If the actual money value of the consideration given was not in excess of such appraised value, such actual money value should be distributed through the said accounts in proportion to the said appraised value of the

constituent elements appropriate to the respective accounts.

"Companies should be prepared to furnish the Commission, upon demand, a full report of the contract of acquisition, the consideration given therefor, the determination of the actual money value of such consideration if other than money, the appraisal, and the amounts charged to the respective accounts for each plant or other such fixed capital purchased. The purchaser is required to procure in connection with the acquisition of any such plant or other fixed capital all existing records, memoranda, and accounts in the possession or control of the grantor relating to the construction and improvement of such plant, and to preserve such records, memoranda, and accounts until authorized by law to destroy or otherwise dispose of them."

"23. Depreciation of plant and equipment.—Telephone companies should include in operating expenses depreciation charges for the purpose of creating proper and adequate reserves to cover the expenses of depreciation currently accruing in the tangible fixed capital. By *expense of depreciation* is meant——

"(a) The losses suffered through the current lessening in value of tangible property from wear and tear (not covered by current repairs).

"(b) Obsolescence or inadequacy resulting from age, physical change, or supersession by reason of new inventions and discoveries, changes in popular demand, or public requirements, and

"(c) Losses suffered through destruction of property by extraordinary casualties.

"The amount charged as expense of depreciation should be based upon rules determined by the accounting company. Such rules may be derived from a consideration of the company's history and experience. * * *

"The rate of depreciation should be fixed so as to distribute, as nearly as may be, evenly throughout the life of the depreciating property the burden of repairs and the cost of capital consumed in operations during a given month or year, and should be based upon the average life of the units comprised in the respective classes of property."

"102. Reserve for Accrued Depreciation—Cr.[1]

"Credit to this account such amounts as are concurrently charged to account No. 608, 'Depreciation of Plant and Equipment,' No. 701, 'Shop Expense,' No. 702, 'Stable and Garage Expense,' and No. 703, 'Tool Expense,' to cover the expense of depreciation of plant, equipment, furniture, tools and implements, as specified in the text of these accounts. This account should also be credited with any amount carried in reserve on January 1, 1913, to cover the expense of depreciation on plant, equipment, furniture, tools and implements installed prior to that date.

"Charge to this account the realized depreciation of tangible fixed capital installed since December 31, 1912, when such capital is relinquished, retired, or destroyed, also the amount of depreciation carried herein in respect to tangible fixed capital installed prior to January 1, 1913, when relinquished, retired, or destroyed. (See secs. 14, p. 34 and 23, p. 67.)

"Charge also to this account such part of the expenditures for extraordinary repairs as is concurrently credited to account No. 611, 'Repairs Charged to Reserves—Cr.' "

"[1] The total of accounts Nos. 100 and 101 should be drawn down on the balance-sheet statement, and the total of accounts Nos. 102 and 103 deducted therefrom, the difference being shown as the net total."

The pertinent provisions of the Interstate Commerce Commission's Uniform System of Accounts for Telephone Companies, First Revised Issue, effective as to Class A Companies January 1, 1933, are as follows:

"21. Telephone plant purchased.—(A) When property in use in telephone service (note instruction 3-AA) is purchased, the accounting therefor shall be as follows:

"(B) There shall be charged as of the date of purchase:

"(1) To account 211, 'Land,' the estimated current value of the land.

"(2) To the depreciable plant accounts the current cost new (estimated if not known), of the property classable therein.

"(3) To account 202, 'Franchises,' the original cost of all governmental franchises and similar rights acquired.

"(4) To accounts 232, 'Station installations,' and 233, 'Drop and block wires,' such proportion of the estimated current cost new, of the plant includable in each of these accounts as the estimated remaining service life of the respective classes of plant includable therein bears to the average over-all service life of the same class of plant installed by the accounting company.

"(5) To account 280, 'Construction work in progress,' the cost of any uncompleted projects acquired.

"(C) The estimated amount of the reserve requirements applicable to the plant shall be credited to accounts 171, 'Depreciation reserve,' and 172, 'Amortization reserve.'

"(D) The difference between the net of the amounts includable in these accounts as provided in the foregoing paragraphs B and C and the cost to the accounting company of the plant purchased shall be debited or credited as appropriate to account 278, "Undistributed cost of property," except that when any difference thus chargeable to account 278 applies to duplicate or other telephone plant which will be retired by the purchaser in the reconstruction of the purchased property and its consolidation with previously owned property, the accounting for the amount applicable to such plant shall be presented to this Commission for consideration and approval.

"(E) Upon application by the company, in each instance, to this Commission and subject to its approval, the company may charge to its telephone plant accounts and may also credit to its depreciation and amortization reserve accounts the amounts carried in those accounts by the vendor company with respect to the property purchased."

"80. Computation and filing of depreciation rates. —(A) The company shall file with the State commission or commissions having jurisdiction, for review and recommendations to this Commission, estimates of the composite annual percentage rates considered applicable to the book cost of each class of depreciable telephone plant owned or used by the company. These percentage rates shall be based upon the estimated service values and service lives developed by a study of the company's history and experience and such engineering and other information as may be available with respect to prospective future conditions. These percentage rates shall be computed in conformity with the group plan of accounting for depreciation and shall be such that the loss in service value of the property, except for losses excluded under the definition of depreciation (note instruction 3-J), may be distributed

under the straight-line method (note instruction 3-Z) during the service life of the property. Such percentage rates shall for each primary account comprised of more than one class of property produce a charge to operating expenses for that account equal to the sum of the amounts that would otherwise be chargeable for each of the various classes of property included in the account. * * *"

"3. Definitions.—When used in this system of accounts:

* * * * * *

"(L) 'Group plan,' as applied to depreciation accounting, means the plan under which depreciation charges are accrued upon the basis of the book cost of all property included in each depreciable account, using the average service life thereof properly weighted, and upon the retirement of any depreciable property its full service value is charged to the depreciation reserve whether or not the particular item has attained the average service life."

"171. Depreciation reserve. — (A) This account shall be credited with amounts concurrently charged to account 608, 'Depreciation,' and account 702, 'Vehicle and other work equipment expense,' for currently accruing depreciation (note instruction 3-J) of telephone plant (see also instructions 80, 81, and 82). It shall also be credited with any amounts which the company may elect to charge to account 413, 'Miscellaneous debits to surplus,' and transfer to this account in respect of past accrued depreciation not provided for. (See also instructions 20-C and 21.)

"(B) at the time of retirement of depreciable telephone plant, this account shall be charged with the book cost of the property retired plus the cost of removal (except the cost of removal of station apparatus) and shall be credited with the salvage value and insur-

ance recovered, if any. It shall be credited with amounts chargeable to account 138, 'Extraordinary maintenance suspense,' as provided in instruction 83. (See also instruction 25.)

"(C) For corporate ledger and balance sheet purposes this account shall be regarded and treated as a single composite reserve. However, for purposes of analysis, each company shall maintain subsidiary records in which the depreciation reserve is broken down into component parts corresponding to the primary telephone plant accounts which include depreciable telephone plant (see also instruction 82); these subsidiary records shall show the current credits and debits to the reserve in complete detail by such primary plant accounts."

The pertinent provisions of the Federal Communications Commission's Rules and Regulations (47 Code Federal Register 31.01-1 *et seq.*) are as follows:

"31.02-80 Computation of depreciation rates. (a) Depreciation charges shall be computed by applying the composite annual percentage rates considered applicable to the original cost (note Sec. 31.01-3 (x)) of each class of depreciable telephone plant owned or used by the company. (Note also Sec. 31.02-81 (b).) These percentage rates shall be based upon the estimated service values and service lives (note Sec. 31.01-3 (dd), (cc)) developed by a study of the company's history and experience and such engineering and other information as may be available with respect to prospective future conditions. These percentage rates shall be computed in conformity with the group plan (note Sec. 31.01-3 (p)) of accounting for depreciation and shall be such that the loss in service value of the property, except for losses excluded under the definition (note Sec. 31.01 (m)), may be distributed under the straight-line method (note Sec. 31.01-3 (ff)) during the service life of the property. Such percentage rates shall not include any allowance for loss in service value of property expected to be installed in the future. The percentage rates shall, for each primary account comprised of more than one class of property, produce a charge to operating expenses for that account equal to the sum of the amounts that would otherwise be chargeable for each of the various classes of property included in the account."

"31.01-3 Definitions. When used in this system of accounts:

• • • • • •

"(p) 'Group plan,' as applied to depreciation accounting, means the plan under which depreciation charges are accrued upon the basis of the original cost (note paragraph (x) of this section) of all property in-

cluded in each depreciable plant account, using the average service life thereof properly weighted, and upon the retirement of any depreciable property its full service value is charged to the depreciation reserve whether or not the particular item has attained the average service life.''

''31.100:4 Telephone plant acquisition adjustment. (a) This account shall include amounts determined in accordance with Sec. 31.2-21 representing the difference between (1) the amount of money actually paid (or the current money value of any consideration other than money exchanged) for telephone plant acquired, plus preliminary expenses incurred in connection with the acquisition; and (2) the original cost (note Sec. 31.01-3 (x)) of such plant, governmental franchises and similar rights acquired, less the amounts of reserve requirements for depreciation and amortization of the property acquired. If the actual original cost is not known, the entries in this account shall be based upon an estimate of such cost.

* * * * * *

''(c) The amounts recorded in this account with respect to each property acquisition shall be disposed of, written off, or provision shall be made for the amortization thereof in such manner as this Commission may direct.''

''31.2-21 Telephone plant acquired. (a) When property comprising a substantially complete telephone system, exchange, or toll line is acquired from predecessors, the amount of money actually paid (or the current money value of any consideration other than money exchanged) for the property (together with preliminary expenses incurred in connection with the acquisition) shall be charged to Account 276, 'Telephone plant acquired.' (Note also Account 139.)

''(b) The accounting for the acquisition of the plant shall then be completed as follows:

"(1) The original cost, estimated if not known (note Sec. 31.01-3 (x)), of telephone plant, governmental franchises and other similar rights acquired shall be charged to the telephone plant accounts, Account 100:2, 'Telephone plant under construction,' and Account 100:3, 'Property held for future telephone use,' as appropriate, and credited to Account 276. When the actual original cost cannot be determined and estimates are used, the company shall be prepared to furnish this Commission with the particulars of such estimates.

"(2) The amounts of the reserve requirements for depreciation and amortization of the plant acquired shall be credited to Account 171, 'Depreciation reserve,' and Account 172, 'Amortization reserve,' and debited to Account 276.

"(3) The amount remaining in Account 276, 'Telephone plant acquired,' applicable to the plant acquired, shall, upon completion of the entries provided in the foregoing subparagraphs (1) and (2), be debited or credited, as appropriate, to Account 100:4, 'Telephone plant acquisition adjustment,' except that when any amount thus chargeable to Account 100:4 applies to duplicate or other telephone plant which will be retired by the vendee in the reconstruction of the acquired property and its consolidation with previously owned property, the accounting for the amount applicable to such plant shall be submitted to this Commission for consideration and approval.

"(c) The accounting for property acquired from predecessors, not provided for in paragraphs (a) and (b), shall be on basis of the amount of money actually paid (or the current money value of any consideration other than money exchanged) for such property."

"31.171 Depreciation reserve. (a) This account shall be credited with amounts concurrently charged

to Account 608, 'Depreciation,' and to clearing accounts for currently accruing depreciation (note §31.01-3(m)) of telephone plant. (Note also §§31.02-80 to 31.02-82.) It shall also be credited with any amounts which the company may elect to charge to Account 413, 'Miscellaneous debits to surplus,' and transfer to this account with respect to past accrued depreciation not provided for. (Note also §§31.2-20(b), 31.2-21.)

"(b). At the time of retirement of depreciable telephone plant, this account shall be charged with the original cost (note §31.01-3(x)) of the property retired plus the cost of removal (except the cost of removal of station apparatus) and shall be credited with the salvage value and insurance recovered, if any. It shall be credited with amounts chargeable to Account 138, 'Extraordinary maintenance and retirements,' as provided in §31.02-83. (Note also §31.2-25.)

"(c) For corporate ledger and balance-sheet purposes this account shall be regarded and treated as a single composite reserve. However, for purposes of analysis, the company shall maintain subsidiary records in which the depreciation reserve is broken down into component parts corresponding to the primary telephone plant accounts which include depreciable telephone plant (note also §31.02-82); these subsidiary records shall show the current credits and debits to the reserve in complete detail by such primary plant accounts."

Appendix II.

Excerpts from Administrative Record.

Certain portions of the administrative record which has been transmitted to this Court as an original document are printed herein for the convenience of the Court (R., p. 136).

Testimony of Mr. H. A. Trax:

"Q. (by Mr. Blackman.) You were Chief Accountant for the New York Company for about twelve to thirteen years?

"A. Yes.

"Q. And your connection with the New York Company ceased when you went to the New Jersey Company, is that right?

"A. That is right.

"Q. Please state what positions you held with the New York Company from the time you first went there until you left?

"A. My title was that of Chief Accountant during the whole period.

"Q. What were your duties?

"A. I was in charge of staff work, reporting to the Vice-President and General Auditor, and it was my duty to handle problems relating to the classification of accounts and the accounting procedure to be followed by the line organization of the accounting department, development of methods, and I was also engaged in rate case work over a good part of that time.

"Q. And while you were Chief Accountant was it necessary for you to become, and did you become, familiar with the uniform system of accounts for telephone companies prescribed by the Interstate Commerce Commission?

"A. Yes, sir, I did.

* * * * * *

"Q. I understood you to say it was part of your duties to see that the rules of the Interstate Commerce Commission were complied with by the company so far as accounting was concerned?

"A. That is right.

"Q. And in that connection was it a part of your duties to prepare instructions covering the application of these rules?

"A. Yes, sir.

"Q. Do you remember a transaction that took place in 1925 and another in 1926 with respect to the purchase of certain toll lines by the New York Telephone Company from the American Company?

"A. I do, yes, sir.

"Q. What, if anything, did you have to do with those transactions?

"A. Well, I was responsible for supervising the entries to be made on the books of the New York Telephone Company reflecting the transaction as it occurred.

"Q. Do you remember just how that was treated on the books?

"A. Yes, the properties purchased were charged on the books to the various fixed capital accounts at the price paid for the property by the New York Telephone Company.

"Q. Do you know Mr. Bradshaw who testified here today?

"A. Yes, I do.

"Q. Was he connected with your department of the Telephone Company in 1925 and 1926?

"A. Yes.

"Q. In what capacity?

"A. He was an accountant and his particular responsibility at that time had to do with the classification of plant accounts as I recall it, and maintenance accounts too I believe.

"Q. Was he directly connected with you and reporting to you?

"A. Indirectly, yes, sir.

"Q. He was a part of your organization?

"A. He was.

"Q. And he reported directly to whom?

"A. Mr. Young.

"Q. What is his name, please?

"A. Mr. B. F. Young, who was Assistant Chief Accountant at that time.

"Q. And what was his relationship to you?

"A. He was assistant, had the title of Assistant Chief Accountant.

"Q. He reported to you?

"A. He did.

"Q. So Mr. Bradshaw reported to Mr. Young, and Mr. Young reported to you?

"A. That is right.

"Q. After the purchase of this property was set up on your books how was the matter of depreciation dealt with?

"A. The depreciation rates that were in effect at the time were applied to the increased amounts in the fixed capital account, which resulted from the purchase of the property, to determine the amount of depreciation expense charged to Account 608, and credited to depreciation reserve.

"Q. There was no so-called acceleration because of the fact that this property was not new?

"A. No, the depreciation rates themselves were not increased at that time on account of the purchase.

"Q. But the same rates that were applied to similar property which you had built and which had been in effect from the beginning were applied to this property?

"A. That is right.

"Q. Now why was that practice followed?

"A. At the time the transaction occurred consideration was given to the effect of the taking of this used property into the company's accounts, and it was

decided that the total depreciation accrual at the rates then in effect would be ample without any increase in the specific rates effected by these purchases, and therefore that no change should be made in those rates.

"Q. While you were with the Company, Mr. Trax, was there ever any allocation made of the general reserve for depreciation against separate accounts?

"A. No, the balance in the depreciation reserve was shown only in total for all classes of property, and likewise the charge to depreciation expense and credits to the reserve for each period were shown only in total on the books.

"Q. How was the amount of the annual expense of depreciation built up and dealt with during the time that you were Chief Accountant?

"A. The amount to be charged to expense was computed by applying to each of the fixed capital accounts the depreciation rate that had been determined for that account, and the total amount to be accrued for all of the accounts was then added together, and that sum total was charged to depreciation expense, and credited to the reserve as one lump sum.

"Q. Do you remember what was the number of the depreciation expense account?

"A. The expense account was Account 608 as I recall it.

"Q. And the only figures that were entered in that account were these totals that you speak of?

"A. That is right.

"Q. But they were developed in the manner you have just stated?

"A. Yes, they were supported by the detailed computation of course, which was made by applying each specific rate to the individual accounts.

"Q. Mr. Trax, it appears from the records that you represented the Accounting Department on the Committee that dealt with the purchase of these poles. Do

you remember what your activities were in that connection?

"A. Well, it was my responsibility there to advise the committee on any matters involving accounting problems. As I recall it, I did not sit in on all of the meetings of the committee because very frequently the work of the committee did not deal with accounting matters at all. It had to do more with the operation and management problems and with those relating to the inventory and appraisal.

"Q. Do you have definite recollection at the present time of the particular matters that were discussed by you?

"A. In the committee?

"Q. Yes.

"A. I don't remember. I would not be able to recall now any specific question that came up in the committee. I know that we discussed with the engineers the question of the effect of this purchase on the depreciation rates, and whether or not the depreciation rates should be increased to allow for the fact that the property purchased was not new and, therefore, had less than the full life remaining.

"Q. It was the result of all that discussion that it was determined it was not appropriate or reasonable to increase the rates?

"A. Yes. Of course we looked at the problem from the standpoint of the overall effect of any changes that would be made. The ruling consideration always was whether the total depreciation accrual for any given period was ample, and it was decided definitely that without any increase in the rates the rates that were already in effect would be ample to provide for retirement of the property purchased. The reason for that was that there were certain other factors that were operating to extend the life of the property in almost all of the accounts which more than offset the shortening of life in a few accounts that resulted from this purchase. That lengthening tendency in the life of the plant was,

of course, reflected in revisions of depreciation schedule from time to time which were I believe in practically every case a downward revision, at least in the total they were downward revisions from time to time." [Tr. pp. 358-366.]

Testimony of Mr. F. J. Kurriss

"Q. (Mr. Blackman.) Mr. Kurriss, what is your business?

"A. I am appraisal engineer of the building and equipment of the New York Telephone Company. In that capacity I am responsible for valuations of buildings and equipment including station apparatus and sundry equipment and also responsible for the development of proper rates of depreciation expense and associated reserve requirements for those classes of plant.

"Q. Does that station apparatus include the property that is known as the instrument?

"A. Yes, it does.

"Q. How long have you been associated with the New York Telephone Company?

"A. For almost twenty years.

"Q. What in—in what capacities?

"A. In various engineering and staff capacities. [Tr. pp. 1005-1006.]

* * * * * *

"Commissioner Maltbie: Did you make any study since 1927 as to what happened after 1927?

"The Witness: Oh yes, we are doing that.

"Commission Maltbie: As to these instruments?

"The Witness: As to these particular instruments.

"Commissioner Maltbie: As to this sort of thing you are talking about?

"The Witness: Not as an individual study. They are included as part of our depreciation study.

"Commissioner Maltbie: This type of instrument that was transferred to the New York Telephone Company, did you make any studies of that since 1927?

"Mr. Blackman: Do you mean, Mr. Chairman,——

"Commissioner Maltbie: Let the witness answer this question, if he wants to.

"The Witness: I assume you are referring to the desk stand instrument?

"Commissioner Maltbie: I am referring to the receivers, transmitters and induction coils that were transferred to the New York Telephone Company.

"The Witness: Yes, our latest depreciation study ——

"Commissioner Maltbie: The answer is yes?

"The Witness: Yes.

"Commissioner Maltbie: What date was that study made?

"The Witness: In connection with the——

"Commissioner Maltbie: I would like to see a witness once that will answer a question directly. Mr. Blackman was on the stand once in our case and he answered the questions directly. I would like to see some of his witnesses do that.

"The Witness: My recollection is that that study was made early in 1938.

"Commissioner Maltbie: As of 1938?

"The Witness: The depreciation study was as of January 1, 1938.

"Commissioner Maltbie: And limited to the instruments that were transferred in 1927?

"The Witness: The study covered the entire station apparatus account. But the purchased instruments are shown as part of the study.

"Commissioner Maltbie: What did the results of that study show?

"The Witness: What did they show with respect to the life of the instruments?

"Commissioner Maltbie: Yes.

"The Witness: In that study we had assumed that the instrument would have a life similar to the station apparatus, that is, the stands with which they are associated.

"Commissioner Maltbie: You make that assumption. You did not trace through the receivers, transmitters, and induction coils that were transferred?

"The Witness: There is no practicable way that could be done.

"Commissioner Maltbie: No, no, no. Answer the question.

"The Witness: No.

"Commissioner Maltbie: That is right. Answer yes or no if you can but don't go off and discourse about some other subject. So you don't know what the actual experience of the company was after 1927 as to this property that was transferred so far as receivers, transmitters and induction coils were concerned; is that right?

"The Witness: Not of the purchased instruments by themselves. [Tr. pp. 1016-1018]

* * * * * *

"Q. (Mr. Blackman) Mr. Kurriss, will you please to describe just how you developed this Exhibit No. 50.

"A. During 1927 studies had just been completed by the New York Company of a new schedule of depreciation rates. These rates were based on average location or service life as determined from turnover cycles. These rates were seven per cent for New York City, which was based on an estimated average salvage of 65 per cent, and an average location life of five years. And for the plant outside of New York City the rate was 4.6 per cent and was based on an average salvage of 70 per cent and an average location life of six and a half years. These rates were actually placed in effect on January 1, 1929.

"Mr. McVeigh: They were rates for what?

"The Witness: Station apparatus.

"Commissioner Maltbie: For all accounts, not for receivers, transmitters and induction coils which were purchased from the A. T. & T.?

"The Witness: No, but they were included in that account.

"Commissioner Maltbie: Oh yes, but there were a lot of other things.

"The Witness: Yes sir.

"Mr. McVeigh: You say those receivers, transmitters and induction coils were included in this study?

"The Witness: What I intended to say was that these rates which were placed in effect were applicable to the entire station apparatus account which included the transmitters, receivers and induction coils.

"This study was actually based on data through the year 1925.

"Mr. McVeigh: Before the New York Telephone Company purchased the receivers, transmitters and induction coils from the A. T. & T.?

"The Witness: That is correct.

* * * * * *

"Mr. Myse: Before we go further on these exhibits, these rates set forth were changed ultimately by the company, were they not?

"The Witness: They have been changed several times since then." [Tr. pp. 1036-1039.]

Testimony of Mr. H. C. Carpenter

"Q. (by Mr. Blackman). Mr. Carpenter, what is your business?

"A. I am the Vice-President in charge of the operating staff of the New York Telephone Company.

"Q. How long have you been connected with the New York Telephone Company?

"A. Since November 1, 1899.

"Q. Will you state briefly the positions which you have held in that company from the beginning until 1930?

"A. I started in the Engineering Department, and I spent a few years doing drafting and blueprinting and testing of various kinds. Then I was Plant Ex-

tension Engineer—I guess it was Plant Extension and Transmission Engineer. Then I was Engineer in charge of the department for a few years. Then I was Chief Engineer for a few years. Then I was General Manager of the downstate area, and then I was made Vice-President in charge of the staff, the position I now have.

"Q. In 1927?

"A. I think it was, I am not sure of the date.

"Q. Or thereabouts?

"A. It was 1926 or 1927, I think it was 1926. [Tr. pp. 513-514.]

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"Commissioner Maltbie: Don't you know that reductions were made in your annual rates because of what was said to be an excessive accumulation in your reserve in the last—well, 10 years?

"The Witness: Will you repeat that?

"Commissioner Maltbie: The New York Telephone Company now, I am talking about.

"Mr. Blackman: Within the last ten years.

"Commissioner Maltbie: Yes.

"The Witness: Will you read the question?

"(Whereupon the question was repeated by the reporter).

"Commissioner Maltbie: That is, the reductions were made in the last 10 years.

"The Witness: The reductions were made in the last 10 years, but I never knew it was for that reason.

"Commissioner Maltbie: You never knew that?

"The Witness: No.

"Commissioner Maltbie: Are you familiar with the discussion and correspondence between the Commission and the New York Telephone Company?

"The Witness: I am.

"Commissioner Maltbie: As to the change in rates?

"The Witness: I am.

"Commissioner Maltbie: And you want to say that you don't know that the amounts in the reserves had any effect upon the changes in the rates thereafter?

"The Witness: I don't know what was in the minds of the Commission, but my distinct understanding was that the question was, that the point raised was that the annual charges that we were then making were too high, and in my discussions about the matter nothing was ever raised about relating the reduction in the annual rate to the alleged excessive depreciation reserve." [Tr. pp. 1141-1142.]

Testimony of Mr. M. F. Orton:

"Q. (by Mr. McVeigh) What is your present position, Mr. Orton?

"A. I am employed by the Public Service Commission of the State of New York as director of research and valuation.

"Q. Will you state your duties in connection with that office?

"A. I have been so employed from July, 1930, to date. My duties include the supervision of the valuation work conducted by the Public Service Commission, in connection with electric, gas and steam utilities, and to some extent in connection with other utilities; the handling of rate matters involving electric, gas and steam utilities, and also to some extent in connection with other types of utilities, and the conduct of any type of research which may arise to be assigned for study by the Commission.

"Q. What other duties do you have, Mr. Orton?

"A. Well, the valuation work includes, and in fact consists largely of engineering and accounting examinations for the purpose of determining the original cost of the existing property, of the utilities, of the classes mentioned, within the state.

"In addition I have had the chief responsibility for the revision of the uniform system of accounts, pre-

scribed by the New York Commission for electric, gas, water, telephone, omnibus and motor carrier companies. [Tr. pp. 1716-1717.]

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"Q. (by Mr. Blackman) Well, then, do you say that if this company had bought this property from the American company, and then set up on its books no more than the net cost to the American company, but had used depreciation rates, the same depreciation rates that it actually did use, that there would be an inflation?

"A. Well, I think that there would have been some deficiency in the reserve.

"Q. Please, Mr. Orton, would you say that in that case there was a deficiency—I mean an inflation?

"A. I would not characterize it as such unless there was a deficiency over the depreciation accruals as a whole. I was going to add, I believe there is a deficiency in the accruals on the instruments, but I can't say it is not offset by excesses on the other types of plant; on the whole, I would not say that that adjustment in depreciation practices, that there would have been any deficiency in the depreciation accruals.

"Q. Then it is your opinion, is it, as I understand it, that if the company has provided on the whole enough or more than enough in its reserve for depreciation for all 22 classes of plant, considered as a whole, it is a matter of no consequence that it has failed to provide quite enough for two or three classes.

"A. That is correct.

"Q. And the reason why it has failed to do that is also a matter of no consequence.

"A. Well, I don't know to what extent that consideration might be taken, but I certainly would not require an adjustment to increase the reserves to surplus on account of that situation, the way you state it." [Tr. pp. 1983-1984.]